

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DARWIN McCOY,

Plaintiff,

-v-

BANK OF NEW YORK MELLON

Defendant,

---

Case Number 12-11110

District Judge Victoria A. Roberts

Magistrate Judge Laurie J. Michelson

**REPORT AND RECOMMENDATION TO GRANT  
DEFENDANT'S MOTION TO DISMISS [5]**

**I. Report**

This is a mortgage foreclosure case in which the plaintiff Darwin McCoy ("plaintiff") is represented by counsel. The case has been referred to this Court for all pre-trial proceedings. (Dkt. 7.) On March 20, 2012, defendant Bank of New York Mellon ("defendant") filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. 5.) On March 28, 2012, the Court issued a Notice of Hearing directing plaintiff to file his response to the motion to dismiss on or before April 13, 2012. (Dkt. 12.) No response was filed. Accordingly, on May 9, 2012, the Court issued an order for plaintiff to show cause in writing on or before May 17, 2012 why his case should not be dismissed for the reasons stated in defendant's unopposed motion. (Dkt. 10.) Plaintiff did not respond as ordered.

**II. Recommendation**

As a result, this Court RECOMMENDS that defendant's motion to dismiss be GRANTED.

### III. Filing Objections

The parties to this action may object to and seek review of this Report and Recommendation within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *McClanahan v. Comm'r Soc. Sec.*, 474 F.3d 830 (6th Cir. 2006) (internal quotation marks omitted); *Frontier*, 454 F.3d at 596-97. Objections are to be filed through the Case Management/Electronic Case Filing (CM/ECF) system or, if an appropriate exception applies, through the Clerk's Office. *See* E.D. Mich. LR 5.1. A copy of any objections is to be served upon this magistrate judge but this does not constitute filing. *See* E.D. Mich. LR 72.1(d)(2). Once an objection is filed, a response is due within fourteen (14) days of service, and a reply brief may be filed within seven (7) days of service of the response. E.D. Mich. LR 72.1(d)(3), (4).

S/Laurie J. Michelson

Laurie J. Michelson

United States Magistrate Judge

Dated: May 22, 2012

---

### PROOF OF SERVICE

The undersigned certifies that the foregoing document was served upon the parties and/or counsel of record via the Court's ECF System and/or U. S. Mail on May 22, 2012.

s/J. Johnson

Case Manager to

Magistrate Judge Laurie J. Michelson